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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 JAMES BYRON,

10 Plaintiff,

11 v.

12 INSTITUTE FOR ENVIRONMENTAL  
13 HEALTH, INC.,

14 Defendant.

Case No. 2:18-CV-01415-RSL

ORDER GRANTING IN PART  
DEFENDANT'S FIRST MOTION  
TO SEAL

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16 This matter comes before the Court on Defendant Institute for Environmental  
17 Health, Inc.'s Motion to Seal Confidential Documents in Support of its Motion for  
18 Summary Judgment. Dkt. #32. After plaintiff James Byron opposed defendant's motion,  
19 the parties met and conferred regarding the need to file documents under seal. Dkt. #52 at  
20 2. Defendants agreed to narrow their claims of confidentiality regarding certain exhibits  
21 and have since filed redacted versions of those exhibits. Dkt. #52-1. At this point,  
22 defendant seeks permission to seal **Exhibits K, Y, Z, AA, DD, GG, LL** to the  
23 Declaration of Sarah Bouchard ("Bouchard Declaration") (Dkt. #31) in their entirety and  
24 to file unredacted versions of **Exhibits B, C, D, G, J, L, M, N, R, S, T, W, EE, and HH**

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26 ORDER GRANTING IN PART DEFENDANT'S  
FIRST MOTION TO SEAL - 1

1 under seal. Dkt. #32. Despite a number of statements indicating that defendant has filed  
2 sealed, unredacted versions of these documents for the Court's review and/or that  
3 defendant would like to "maintain" the seal, the record as it currently stands does not  
4 contain any of the information defendants seek to seal. Rather, one-page placeholders  
5 have been submitted for **Exhibits K, Y, Z, AA, DD, GG, LL** and the available versions  
6 of the motion for summary judgment (Dkt. #3) and **Exhibits B, C, D, G, J, L, M, N, R,**  
7 **S, T, W, EE, and HH** (Dkt. #52-1) contain significant redactions. No unredacted copies  
8 have been provided.

9 "There is a strong presumption of public access to the court's files." LCR 5(g). In  
10 the Ninth Circuit, the presumption is particularly strong for documents attached to  
11 dispositive motions. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th  
12 Cir. 2006). In order to override the common law right of the public to inspect and copy  
13 court documents, "a party seeking to seal judicial records must show that compelling  
14 reasons supported by specific factual findings outweigh the general history of access and  
15 the public policies favoring disclosure." *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665,  
16 678 (9th Cir. 2010) (internal quotation marks and alterations omitted). Ultimately,  
17 "[w]hat constitutes a compelling reason is best left to the sound discretion of the trial  
18 court." *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir.  
19 2016) (internal quotations omitted). The Ninth Circuit has found, however, that protecting  
20 trade secrets is one such legitimate private interest that outweighs the public's interest in  
21 disclosure. *Kamakana*, 447 F.3d at 1179. A trade secret "may consist of any formula,  
22 pattern, device, or compilation of information which is used in one's business, and which  
23 gives him an opportunity to obtain an advantage over competitors who do not know or  
24 use it." *In re Electronic Arts, Inc.*, 298 Fed. Appx. 568, 569 (9th Cir. 2008), quoting

1 *Restatement of Torts* § 757 cmt. b.

2       The Local Civil Rules of this district provide two avenues through which a party  
3 may obtain permission to file a document under the seal. The first method is to file a  
4 motion or stipulated motion to seal at the same time that the document is filed under seal.  
5 This method allows the Court to review the purportedly confidential material when  
6 determining whether a seal is appropriate. If the Court grants the motion to seal, the  
7 document will remain sealed. If the Court denies the motion, the document will be  
8 unsealed unless the party relying on the sealed document withdraws it from consideration.  
9 LCR 5(g)(6). The second method is to file a motion to seal before the document is filed.  
10 Defendant has chosen to utilize that method here, but there is a significant downside: the  
11 Court cannot review the actual document and must determine whether the moving party  
12 has made a compelling showing based solely on counsel's argument and supporting  
13 declarations.

14       It is defendant's burden to show that a seal is warranted by specifying the public  
15 and private interests that favor a seal, the injury that would occur if a seal were not  
16 granted, and why a less restrictive alternative - such as redaction - would not be  
17 sufficient. LCR 5(g)(3)(B). Vague and conclusory assertions regarding the  
18 competitiveness of defendant's industry and/or the confidential nature of a document that  
19 has not been provided for review (*see* Dkt. #52-2) do not satisfy this burden, especially in  
20 the absence of the documents themselves. The Court has carefully considered the  
21 submissions of the parties, but has been unable to determine the content of certain  
22 documents. Where the parties dispute the content of a document and the remainder of the  
23 record does not resolve the issue, the dispute has been decided in plaintiff's favor.

1 Having reviewed the submissions of the parties, the Court finds as follows:

2 **Exhibits DD and GG** to the Bouchard Declaration contain the communications  
3 between the parties that form the basis of plaintiff's retaliation claim. Dkt. #52 at 4. The  
4 parties agree that plaintiff's questions about defendant's research protocols are already in  
5 the public record. Dkt. #52 at 4; Dkt. #42 at 7. Defendant cannot file under seal  
6 information that is already within the public domain. Defendant argues, however, that the  
7 documents also contain "internal deliberations regarding [defendant's] testing methods  
8 and the specific information regarding how [defendant] prepared this study" that are not  
9 part of the public record. Dkt. #52 at 4. That information could give defendant's  
10 competitors an unfair advantage if disclosed by affording insight into defendant's  
11 proprietary testing methods. The Court finds that sealing **Exhibits DD and GG** in their  
12 entirety is unwarranted, but that defendant may file these documents under seal if and  
13 only if it provides publicly-available redacted versions that protect only the information  
14 regarding defendant's testing methods and how it prepared the study.

15 According to defendant, **Exhibit K** to the Bouchard Declaration contains detailed  
16 information about revenue generated from certain clients. Dkt. #52 at 7. Plaintiff  
17 acknowledges that **Exhibit K** contains information about sales to specific customers but  
18 disputes that the remainder of the information is confidential or proprietary. Dkt. #42 at 5.  
19 The Court has not been able to review the document and, without it, defendant has not  
20 met its burden to support a seal of **Exhibit K** in its entirety. Defendant may file this  
21 document under seal only if it provides a publicly-available redacted version protecting  
22 only the identity of its clients.

23 According to defendant, **Exhibit Y** to the Bouchard Declaration contains "detailed  
24 information regarding IEH's confidential and proprietary testing methods" from a  
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1 confidential presentation to a potential client. Dkt. #52 at 3. Plaintiff asserts that the  
2 information is available on defendant's website. Dkt. #42 at 6. Defendant does not dispute  
3 that the information is already in the public domain, and the Court has no way of  
4 determining otherwise. Defendant's motion to seal **Exhibit Y** is DENIED.

5 Defendant seeks permission to file **Exhibit Z** to the Bouchard Declaration under  
6 seal because the document "cites to" a proprietary testing method and contains  
7 information related to defendant's business and marketing strategy. Dkt. #52 at 4.  
8 Defendant argues that an industry competitor could use the information to unfairly  
9 compete with defendant. *Id.* Plaintiff asserts that the exhibit is a letter that contains no  
10 confidential information. Dkt. #42 at 6. Because the Court has no way of resolving the  
11 parties' disagreement regarding the contents of the document, the dispute is resolved in  
12 plaintiff's favor, and defendant's motion to seal **Exhibit Z** is DENIED.

13 According to defendant, **Exhibit AA** is a letter containing "a description of IEH's  
14 market research on pricing for testing services, and financial information specifically  
15 prepared for a potential client." Dkt. #52 at 3. Defendant claims that disclosure would  
16 allow IEH's competitors to undercut its client-specific prices. *Id.* Plaintiff asserts that the  
17 letter lacks "IEH pricing data, test methods or specific business strategy," but  
18 acknowledges that it contains a market survey and a summary of microbiological tests.  
19 Dkt. #42 at 6. The Court finds that defendant has an interest in protecting its market  
20 research but has not met its burden to support a seal of **Exhibit AA** in its entirety.  
21 Defendant may file this document under seal only if it provides a publicly-available  
22 redacted version protecting only its market research.

23 **Exhibit LL** to the Bouchard Declaration is, according to defendant, an internal  
24 document containing data and results of a study for a potential client, including  
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1 “sensitive, non-public confidential and proprietary information” regarding study designs  
2 and results. Dkt. #52 at 5. Plaintiff asserts that the document’s confidentiality is not  
3 obvious from its content, but does not dispute that it contains proprietary information  
4 regarding defendant’s studies. Dkt. #42 at 7. Because the parties do not dispute the  
5 sensitive and proprietary content of the document, defendant’s motion to seal **Exhibit LL**  
6 is GRANTED.

7 As discussed above, defendant has filed redacted versions of **Exhibits B, C, D, G,**  
8 **J, L, M, N, R, S, T, W, EE, and HH.** See Dkt. #52-1. Per the Local Rules, the Court has  
9 discretion to determine whether the information will remain redacted. LCR 5(g)(2)(B).  
10 According to defendant, the redacted portions of those exhibits contain information  
11 regarding its clients, business and pricing strategies, and revenue from clients. Dkt. #52 at  
12 7-8; *see generally* Dkt. #52-2.

13 **Exhibit B** contains excerpts of a deposition from the underlying administrative  
14 proceedings. Dkt. #52-2 at 1, 6-25; Dkt. #42 at 3. Defendant acquiesced to many of  
15 plaintiff’s objections regarding the scope of the confidentiality designations within this  
16 exhibit, and has withdrawn the designations except as to testing methods and information  
17 regarding clients. *See generally* Dkt. #52 at 5; #52-2 at 6-25. Plaintiff challenges the  
18 redactions on pages 50-52 on the grounds that the information is already in the public  
19 record and that none of the testimony on those pages reveals confidential information.  
20 Dkt. #42 at 3. Defendant does not refute plaintiff’s assertions that the matters discussed  
21 on pages 50-52 are already a matter of public record and/or are not confidential. *Id.*  
22 Because defendant has not provided a compelling reason to redact those portions of  
23 **Exhibit B**, further disclosures are required.

24 According to plaintiff, **Exhibit N** is a summary of plaintiff’s work performance  
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1 from his employment with defendant: he disputes defendant's assertion that the document  
2 contains information regarding defendant's clients, business strategy, or revenue  
3 generated from clients. Dkt. #42 at 7. Defendant has redacted large sections of the  
4 document, including a section entitled "2010 Highlights." Dkt. #52-2 at 86-87. Because  
5 defendant has not satisfactorily demonstrated that a compelling reason exists to redact this  
6 portion of plaintiff's performance review, defendant's motion to seal that section of  
7 **Exhibit N** is DENIED.

8 Defendant has given sufficiently compelling reasons for its redactions in **Exhibits**  
9 **C, D, G, J, L, M, R, S, T, W, EE, and HH**. Defendant's may file unredacted versions of  
10 those exhibits under seal.

### 11 CONCLUSION

12 Defendant's motion to seal is GRANTED in part and DENIED in part. Defendant  
13 may, within seven days of the date of this Order:

- 14 ● file **Exhibit LL** under seal;
- 15 ● file unredacted versions of its motion for summary judgment and **Exhibits C, D,**  
16 **G, J, L, M, R, S, T, W, EE, and HH** under seal;
- 17 ● file publicly available versions of **Exhibits Y and Z**;
- 18 ● file **Exhibit K** under seal only if it also files a publicly-available redacted  
19 version of the exhibit protecting only the identity of its clients;
- 20 ● file **Exhibit AA** under seal only if it also files a publicly-available redacted  
21 version of the exhibit protecting only its market research;
- 22 ● file **Exhibits DD and GG** under seal only if it also files publicly-available  
23 redacted versions of the exhibits protecting only its testing methods and study  
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● file **Exhibit B** under seal only if it files a publicly-available redacted version of the exhibit that does not obscure the information on pages 50-52;

● file **Exhibit N** under seal only if it files a publicly-available redacted version of the exhibit that does not obscure the information on pages 86-87.

Dated this 21st day of November, 2019.

Mr S Casnik

Robert S. Lasnik  
United States District Judge